

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
December 16, 2010

Meeting Began At: 3:00 P.M.

Meeting Ended At: 4:10 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

Item 1 - Introductions and Notice of Open Meetings Law Posted by Door

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

Snyder stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 3 – Approval of the minutes from the JPA meeting held November 18, 2010

Snyder asked for any corrections or changes to the minutes. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

Item 4 – Approval of Payment Registers

Don Herz brought forward two payment registers for the Board's approval. The first report has been changed to coincide with the JPA meetings and will be run on a monthly basis. It contains three disbursements totaling \$51,000. One of these is to CSL for \$41,000 for work done in September, October and November. The other report contains Public Works engineering costs that have been charged to the program for about \$8,500. Public Works Engineering Services charges their time to the project they are working on and those costs are paid through an interoffice transaction. They were not included in the check registers for the past couple of months because they are not paid with an actual check. Herz will provide a similar report for the Board's approval as Engineering Services continues to work on projects.

Clare clarified that from now on Herz will provide both the check register and the electronic payment. Herz affirmed that he will provide both and they are also reflected on the disbursement report.

Snyder noted that the Public Works Engineering Services charges are from September through the end of November and asked if there was anything before that. Herz noted that they started to bill against the projects on September 1.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the payment registers. Beutler seconded the motion. Motion carried 3-0.

Item 5 – Review of the November 2010 Expenditure Reports

Don Herz noted that since the last meeting he has been looking at enhancing the information that is provided in the reports. On the report the Board will see a column added called encumbrances, which will represent any commitments that have been approved for which a payment has not been made. For instance, the CSL contract is for about \$1.5 million and if there had not been any payments made, the entire amount would have shown as an encumbrance. As payments are made the amount of encumbrance will be reduced and converted to payments. The purpose is to give the Board more information regarding the available balance. Herz has discussed the possibility of breaking this information into two pieces, the engineering/soft costs and the construction costs. This report would then be a summation of those.

Herz and his staff have also looked at taking the expenditure report and putting it on the website to allow individuals to drill down against any expenditure and see the detail. Currently someone would have to review each monthly report to determine the total payments made on a particular project. Herz also plans to record the approved contracts on the report and will look at providing supplemental information so the Board will know where it stands with respect to the budget. Next month, Benham will start taking over more of this reporting and provide additional information regarding the progress of the project.

Clare was thankful and appreciative of Herz's efforts. The Board wants to make sure the expenditures they are approving are in line with what the budget shows. The additional information will be very helpful. Clare asked for Herz's observations regarding how things are progressing financially within the budget. Herz has not seen anything that causes him any concern. With the contracts that the Board has approved and the additional contracts that need to be completed, the JPA should still be well under the engineering/soft cost budget of about \$40 million. It is difficult to say anything about the construction budget until construction contracts start coming in and the Construction Manager provides a guaranteed maximum price.

Snyder asked if all of this information is online. Herz pointed out that from the City's homepage there is a link to the West Haymarket JPA website. The website contains all of the agendas, minutes and attachments from every meeting.

Snyder asked for any comments from the public. No one came forward.

Item 6 – Review and Approval of the Amended JPA Operating Budget

Herz pointed out that when the Operating Budget was put together, the debt payments for the interest or note payments were not included. He would like to get the Board's concurrence with the amounts on the amended budget. The amended budget includes two modifications. The first is for \$6.7 million for interest payments to be made on the \$200 million bonds through August 31, 2011. This will include a payment made in December and another payment to be made in six months. The other modification is a \$2 million note principle payment for the line of credit that was taken out until the JPA had permanent financing. Adequate notice was made when the bonds were issued and the Board approved those transactions. Herz would like the Operating Budget to reflect those payments.

Clare inquired if the principle repayment was for the \$50 million line of credit that was issued of which only \$2 million was utilized. Herz said that is correct, the line of credit was in the event the JPA needed to close on some property before the first bond issue went through. There were some operating expenses that occurred before the bond issue closed so an initial draw of \$2 million was made. The line of credit is now closed.

Snyder asked Herz to clarify the sources of funds that are part of the amended budget. Herz explained that when the \$200 million was issued, some of the proceeds were set aside to pay the interest. In addition to that, the federal government is providing a 35% subsidy payment of the interest due to the Build America Bonds that were issued. The first subsidy payment of \$2.4 million has been received. Therefore, the sources of funds are from the capitalized interest fund and federal subsidy payment.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 7 – Bill No. WH 10-19 Resolution to Approve a Letter of Agreement Between the West Haymarket Joint Public Agency and District Energy

Rick Peo came forward and noted that this item was on the agenda and discussed at the last meeting. The Letter of Agreement provides preliminary funding in the amount of \$2 million for the DEC to prepare development plans, specifications and feasibility study costs for a plant to heat and cool the arena and other facilities in the West Haymarket project area. This is the first of many steps to come up with a cooling system for the area. In the future, the decision would have to be made if this facility will be owned by the DEC or the JPA. The ownership will determine if this advanced funding will be reimbursed back to the JPA or if it will become part of the JPA's development costs.

Clare thought the \$2 million would be more like a loan. Peo stated it could be a loan if the DEC ultimately becomes the owner of the plant. If the JPA becomes the owner it would be part of the JPA's costs, however, that decision has not been made. The studies are ongoing and the final recommendation will primarily be based on the financial advantage to the JPA or DEC.

Beutler asked what the estimated cost of the plant will be and if it was originally identified as a cost that was intended to be paid by the JPA. Peo thought the cost would be in the neighborhood of \$12 million. Don Herz added that he had originally shown that the JPA would pay for this through the arena operating costs. There may be a financial advantage for the JPA to finance the plant because the JPA will either pay for it through a capital cost or by reimbursing the DEC through energy usage. As more information becomes available about the construction costs a decision can be made if this would fit in the construction budget or if it should be paid as originally budgeted.

Beutler inquired of the Board executed this document, does the JPA retain the right to insist that the capitalization be done by the DEC. Peo answered that the way the Letter of Agreement is drafted; the funding would primarily be a contribution to the DEC. The presentation, resolution and testimony at the DEC Board meeting stated that the ownership of the plant will be determined at a later date. There will have to be a Memorandum of Understanding and a final agreement between the JPA and DEC before the plant could go forward and be constructed.

Beutler asked if a DEC representative was present to answer questions. Doug Bantam, Lincoln Electric System, came forward for the DEC. Beutler thanked Bantam for being present and asked if the DEC considered the decision to capitalize by the JPA or DEC a decision of the JPA. Bantam answered that they are willing to do it either way.

Clare questioned if the \$2 million is for part of the initial design work, would the total cost of the facility then be \$14 million. Bantam observed that part of the reason it is being structured this way is because they have the same issue as the arena as far as not knowing what the actual capital costs will be. Once the design is completed and out for bids they will know what the capital cost is and can determine what the fixed operating expenses will be to the JPA. The ownership decision can then be made at that point. Snyder asked who would be making that decision. Bantam stated that the DEC is fine either way because there will be a recovery of the capital cost either through an operating rate or through the JPA paying the capital expense. The decision would probably be based on whichever has the least cost to the JPA. Snyder requested some statistical information to show the advantages of owning the plant and what kind of profit or loss the JPA would have.

Clare observed that there is a reference in the budget to \$4 million for DEC and a utility budget of \$4.2 million. He inquired if those numbers were separate from this \$2 million. Jim Martin, Program Manager, came forward and stated that the amounts in the budget are for the distribution of the energy that will be out in the street.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 – Bill No. WH 10-23 Resolution to Approve a Contract between General Excavating and the West Haymarket JPA for Arena Site Diesel Fuel Plume Remediation

Miki Esposito reported that this is a resolution to approve the contract for the petroleum remediation or the Title 200 work. If approved, work would begin in January and probably continue until the end of February. This is necessary environmental remediation in order to get a No Further Action Letter from DEQ. The contract amount is approximately \$830,000 and a reimbursement application would be submitted to DEQ to get the money back.

Beutler pointed out that he did not have the contract in his book, only a page referencing a website. Snyder and Clare had the same. Esposito reported that the contract was about 169 pages with the important parts in the first 14 pages containing the Notice to Bidders and contract documents for signatures. The rest of the contract has addendums and appendixes that are relevant documents to the contractor. If approved by the JPA, a Notice to Proceed would go out next week to General Excavating. Beutler asked how many bidders there were. Esposito was not certain but indicated that General Excavating was the lowest responsible bidder.

Snyder asked what would happen if this item was delayed until the next meeting on January 26, 2011. Esposito explained that the monitoring period would delay work until February. Performance monitoring has to be done to make sure the remedial action work is done. There can't be development on the site for two years after the monitoring is complete.

Clare suggested holding a special meeting for the purpose of reviewing this contract. Beutler asked how long this contract could be delayed without slowing the project. Esposito felt there was enough flexibility to delay until the first of the year.

Clare made a motion to delay action on this item until the special meeting. Beutler seconded the motion. Motion approved 3-0.

Snyder advised that the public would be notified when the special meeting is set. If there are any other items that come up, they can be brought before the Board as well to speed things along.

Item 9 – Bill No. WH 10-24 Resolution to Approve Change Order No. 1 to the Contract with TJ Osborn for the West Haymarket Utility Relocation Project

Roger Figard informed the Board that at the time this contract was put out for bid, they were not certain of the insurance requirements that Burlington Northern was going to require. The City bid the project and assigned it to the JPA. Burlington Northern increased their request on the insurance coverage to \$5 and \$10 million. The \$17,000 is the additional cost for TJ Osborn to secure that coverage. TJ Osborn is working on their property to relocate the sanitary sewer.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 10-25 Resolution to Accept the Programming Report from DLR

Dan Marvin stated that DLR has put together this initial phase programming report. Benham has had meetings with the University and other stakeholders to discuss the different sized rooms for the various aspects of the building. This is an initial first step to what the ultimate size of the spaces in the building will be. DLR has asked that we start narrowing down the parameters so they have direction on what to do with the building. This resolution would start that process.

Beutler asked legal counsel to come forward to discuss the nature of the document and why the Board needs to approve it. He wanted to know what liability it creates if something in the plan changes. Rod Confer explained that the consultant probably wants this document as protection. If they begin the design with an understanding of what the project consists of and then we come back with different requirements they can use this as a source document to be paid more or to say they are not liable for any delays. Beutler pointed out that there are things in the document not to be resolved at this point, therefore, he did not feel comfortable taking a position on unresolved matters if they may be used to claim additional expense.

Jim Martin pointed out that this is common practice in a project like this. The report is a conceptual document that tries to define the original assumptions to get the process started. There is no guarantee that any changes to the document would result in additional fees. Beutler asked what the ramifications would be if this was delayed. Martin did not think there would be any ramifications. Confer added that it could lead to some uncertainties for DLR and may slow them down in their work if they don't know exactly where we want them to go. Marvin added that the ultimate goal is to flow this information to the Board and get direction to keep the process moving forward.

Snyder observed that part of the problem is that the Board members have not been involved in the programming meetings. They do not have the background information and have not been briefed on the processes that lead to the creation of the document. Martin was willing to arrange for DLR or members of the team to come forward and brief the Board.

Beutler inquired if sustainability has been considered with the design. Martin indicated that the team has been talking about sustainable design and will be giving the Board estimates of the various levels of sustainability. Those items that are at a higher level will cost more. Beutler asked if there had been discussion about how to keep the costs under control so that it fits into Don Herz's cost estimates. Martin explained that the team started with a basic assumption such as a 16,000 seat arena with the capability to expand. In a sports arena the immediate focus is on the seating bowl because it determines what the foundation system looks like. They then design to a budget, adding the other aspects such as suites and bathrooms later on. The CMR is brought in early so they can be estimating costs as the design is taking place.

Beutler was appreciative of the speed and level of detail the team has provided. He would like a little more time to absorb the information and think about a few questions he has. Snyder agreed. Martin reminded the Board that although the report looks very specific, it is still at a conceptual level.

Item 11 – Bill No. WH 10-26 Resolution to Approve Amendment No. 1 to the Haymarket Infrastructure Design Contract

Roger Figard explained that this is a resolution to add design services for two more pieces of infrastructure to the contract approved at the last Board meeting. This is not a change order or an overage; it is an amendment to add additional design pieces. Figard distributed two documents to the Board. The first is a map showing the different pieces of civil infrastructure surrounding the West Haymarket. There are 17 different activities that need to be done to complete the project. The second document is a listing of the 17 pieces that will be tasked out by the consultant for a separate fee. When the Haymarket infrastructure team was selected it did not make sense and was not possible to have all 17 activities scoped out at that time. Therefore, the separate activities will be scoped out and negotiated throughout the project.

Today the Board is being asked to add the design services for the streetscape design (A7) and the Amtrak station design (A14). The streetscape design will be done by Clark Enersen for just under \$406,000. The anticipated completion date is September 30, 2013 as each piece will be added to the project as it is put under construction. The Amtrak station and platform design will be completed by Sinclair Hille for just under \$237,000. The goal is to go out for bids on August 1, 2011, with a target construction date of October 1, 2011, and completion date of June 15, 2012. These two pieces will take the original contract from \$2.7 million to \$3.35 million.

Figard reiterated that this is not a request for additional money for the earlier work; it is adding additional tasks that are needed to move ahead. He will be returning to future Board meetings with additional amendments to move ahead with different pieces.

Clare expressed his appreciation for the explanation. He asked if the expenditures that will be added are part of the budget that Don Herz put together. Herz stated that all of the costs in addition to the amount the Board initially approved are within the engineering/soft cost budget.

Beutler inquired about the improvements shown on Sun Valley Boulevard and if all of the changes will be in place before the State changes the right-of-way. Roger informed the Board that the improvements to Sun Valley Boulevard that the State of Nebraska has proposed from West O Street to 1st and Cornhusker have been shelved and taken out of their funding program. If the State completes the project at some point in the future, the improvements the JPA makes along Charleston and the new bridge access will be compatible. Beutler asked if there were parts of Sun Valley Boulevard that would be abandoned with the State's improvements. Figard stated that the portion over I-180 and towards 10th Street would be abandoned under the State's plan. Due to that, the improvements would be minimal but are necessary to support traffic coming out of the parking area.

Beutler asked if the improvements on Sun Valley near O Street and Cornhusker Highway are being 100% funded by the JPA. Figard noted that the decision to make those improvements has not been made. The JPA boundary map has not been amended to include those locations. They are shown to note that those improvements need to be done but there has not been a commitment by the JPA to do them. They are open for further discussion and negotiations. Beutler questioned if those pieces are covered under the original cost estimates. Figard answered that

they are not which is why they will not bring them to the Board at this time. Snyder inquired if the State would be interested in helping the JPA make those improvements. Figard indicated that they continue to have dialog with the State but it will be an uphill battle to get them to find the revenue within the three year timeframe. There have been discussions about getting credit for any funds the JPA expends on those pieces. Figard will come back for discussions with the Board when he has more information.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 12 – Set Next Meeting Date: Wednesday January 26, 2011 3:00 P.M. (County/City Building Room 303)

The next JPA meeting will be announced later, due to the special meeting. After that, the next meeting will be held on Wednesday January 26, 2011 at 3:00 P.M.

Clare made a motion to adjourn. Beutler seconded the motion. Motion carried 3-0.

Item 13 – Motion to Adjourn

Meeting adjourned at 4:10.

Prepared by: Melissa Ramos-Lampli, Engineering Services